

LIABILITY LAW NOW DECLARED CONSTITUTIONAL

First Judge to Say So
Is Hanford at
Seattle.

Department of Justice
Much Cheered by
Decision.

Two Courts Had Already
Pronounced Act Un-
constitutional.

What has been widely regarded as a conspiracy to destroy the employers' liability legislation, passed by the first session of the Fifty-ninth Congress, received a setback yesterday when there was received in Washington, for the Department of Justice, copies of the first decision yet rendered, sustaining this act.

It was not without a determined fight that the employers' liability act was passed. For twenty-two years the friends of organized labor, and other advocates of progressive legislation, pressed for such a law, and always the great employing interests were able to defeat them. Last year, however, the law passed, and then began the struggle to sustain or destroy it.

A few weeks after the measure passed Congress, a meeting of leading counselors of railroads in all parts of the country was held quietly at Louisville, to consider means of fighting the measure. The matter was considered for several days, and a program outlined.

Line of Attack.

It was decided first to have the strongest possible presentation prepared of the arguments against the measure's constitutionality. This was discussed in detail and with much erudition. The opinion of the railroad lawyers was that it was absolutely necessary to have the law held unconstitutional.

Having decided on the line of attack, the next thing was to find the right forum. The known views of various Federal judges in all parts of the country were canvassed, and it was decided that the law should be taken first before a court known to have entertained a hostile view to this sort of legislation.

Cases were pending in different parts of the country to which the law would apply. One was pending before Judge Evans, of the western district of Tennessee; another before Judge McCall, of the eastern district of the same State. Both these judges were on record as having vigorously opposed such legislation. It was only necessary, then, to hold back decisions in cases pending in other courts by dilatory motions, pleadings, etc., and it would reasonably be expected that Judges Evans and McCall would in due time hand down decisions holding the law unconstitutional.

Judges Riddled Law.

This plan, it is alleged, was carried out to the letter. In line with their previously declared views, Judges Evans and McCall both decided that the law was unconstitutional and thoroughly riddled it.

But the unexpected happened. The United States Government, through the Department of Justice, intervened, in order to employ its legal machinery to assure a thorough presentation of the case, and get the law, if possible, sustained in the Supreme Court. This was done by Attorney General Moody, at the direction of President Roosevelt.

The first case decided came up from the court of Judge Evans. Steps were immediately taken to appeal it, the Government was permitted to appear, and under the expedition of argument has been set for April 1. Immediately following the Evans case came that from Judge McCall, likewise holding the law unconstitutional.

The friends of the legislation were not at all cheered at the prospect of taking up the case to the Supreme Court on these two precedents—both strongly declaring against the measure. It was regretted that at least there could not have been one case sustaining the view of the Government.

One Favorable Decision.

Yesterday word was received that the Government has at last won a case. It comes from the State of Washington, and the decision was handed down by District Judge Hanford, of Seattle. A copy of his opinion has been received, and has afforded the utmost gratification to those interested with defending the new law. Judge Hanford discusses the law in the broadest way, holds that it is constitutional, and in no way out of harmony with the established spirit and tendencies of this country's jurisprudence.

Judge Hanford is one of the ablest men on the district bench anywhere in the country, and his opinion is expected greatly to strengthen the Government in presenting its case on April 4 before the Supreme Court. There was much satisfaction yesterday at the Department of Justice and the Interstate Commerce Commission over the receipt of the decision.

The case from Judge Hanford is that of Plumer vs. The Northern Pacific road. Plumer was a brakeman and lost a leg in the service. He sued for damages, and was awarded \$5,000, the employers' liability bill being pleaded by his attorneys. In ruling on a motion for a new trial Judge Hanford said on the subject of the new liability act:

Judge Hanford's Ruling.

"A petition to set the verdict aside has been interposed, alleging that said act is unconstitutional and void."

"After deliberation, with due respect

Chief Engineer Newell New Reclamation Head In Place of Walcott



FREDERICK H. NEWELL,
Director of Reclamation Work Lauded by Department.

Department Describes New Appointee Who Will Have Charge of Work Costing \$1,000,000 Monthly.

Frederick H. Newell, who has been chief engineer in charge of the reclamation work since its beginning, was late yesterday afternoon made the head of that service.

Secretary of the Interior Garfield, in announcing the appointment of Mr. Newell as director, makes public a letter written to Director Charles D. Walcott in which he accepts the oral resignation tendered by the latter last December, about the time he was elected secretary of the Smithsonian Institution. It has been hinted that Walcott might be permitted to serve in both capacities. Secretary Garfield expresses his appreciation of the work which Walcott has accomplished by his "untiring devotion."

Department Lauds Newell.

In a sketch of Newell, which accompanies the correspondence, the department gives him credit for the great work which has been accomplished by the Reclamation Service, and says that the results of his work in the reclamation of the great American desert attracted such wide attention as to bring from Congress an annual appropriation until, in 1902, when the reclamation act was passed, it amounted to \$200,000 annually.

In its laudation of Newell, the department says:

"To contrary decisions of other courts, I am convinced that the employers' liability act is not unconstitutional, nor, in principle, a departure from the legislative policy of the Government. The argument against the constitutionality of this statute is that the power of Congress to enact laws affecting commerce is conferred by the interstate commerce clause of the Constitution, and that the contracts of carriers with their employees are matters of local concern, not comprehended within the constitutional grant of power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." This view appears too narrow. Commerce has been defined to be traffic—that is, the buying, selling, and exchanging of commodities. This comprehends more than the mere contracts by which merchandise is bought, sold, and exchanged. The actual transfer of merchandise and delivery of the manual possession thereof, and its transportation from one place to another are included. Regulations of commerce are rules to be obeyed in carrying on the business of buying, selling, exchanging, transferring, and moving the property which is the subject of traffic, and to be effective such regulations must not only control the conduct of merchants, bankers, and others engaged as principals in the business, but their servants and agents, and the carriers who serve them in the transportation of property from one place to another, and those who furnish the facilities for communication between distant points which aid the business. Ships, vehicles, railways, telegraph lines, and cables are all necessary to traffic, and subjects of regulations of commerce, which may be prescribed by lawful authority. But merchants and merchandise, bankers and money, clerks, accountants, and agents, ships, vehicles, tracks, locomotives, cars, storehouses, wharves, telegraph lines, and cables, and the postal service all combined would be ineffectual to carry on foreign and interstate commerce without the skill and strength of captains, engineers, firemen, seamen, stevedores, trainmen, mechanics, and the host of laborers constituting the transportation system which keep in repair the physical appliances of

commerce. The employees who work for wages in every branch of the business, giving life and nobility to trade are equally subject to regulations of commerce as those whom they serve, and regulations prescribing their rights and obligations with respect to their employment not only affect commerce but regulate commerce.

The department declares that if Newell has a hobby, it is his insistence on a close personal acquaintance with his work, and says that he spends a large share of his time in camp discussing details with those who are designing or building.

Construction work in the service is now going forward on twenty-five projects in twelve States and two Territories, involving the ultimate expenditure of \$40,000,000 and the reclamation of 1,200,000 acres. The work is giving employment to 30,000 people, and involves an expenditure of approximately \$1,000,000 a month. Among the great things accomplished has been the establishment of eight new towns, with a total population of 10,000 residents.

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CORCORAN ART GALLERY GETS EVANS COLLECTION

William T. Evans, of Montclair, N. J., possessor of some of the most valuable works of art in this country, has just announced a generous gift to the Corcoran Art Gallery of forty of the best works in his collection. The gift is to be placed immediately, and is to be known as the "William T. Evans collection." The donation includes the works of many noted American artists, both living and dead, among the former being works of Homer, Blake, Degas, La Farge, Ranger, and Francis Murphy. Among the latter are some of the best works of Twachtman, Wyant, Homer Martin, and Inness, and others of equal note.

The intrinsic value of Mr. Evans' gift amounts to many thousands of dollars. The real value of the contribution, from an artistic standpoint, cannot be estimated. Mr. Evans is noted for his generosity along these lines, and his loan has added to art exhibits in various parts of the country from time to time. His last departure along this line, and unsolicited contribution to the national collection is of inestimable value to the art loving public.

The pictures will be placed in the galleries as soon as the transfer can be made.

INGENIOUS THIEF
STEALS AUTOMOBILE

The Columbia Carriage Company, of Fifteenth street and Ohio avenue northwest, reported to Police Headquarters last night that a Columbia runabout automobile, owned by Miss Matilda St. Clair, of 123 C street northwest, had been stolen from Thirteenth and F streets northwest, yesterday afternoon at 5:30.



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PAN-AMERICAN REPRESENTATION AT THE HAGUE

Root Wants Them All,
But Brazil and Vene-
zuela Balk.

Steps are being taken by Secretary Root to have each of the Latin-American republics represented at The Hague peace conference next summer. Each of the countries, it develops, has been quietly sounded by the Secretary of State, and each except Venezuela has signified its desire to be represented.

The action of the legislative body of the Netherlands in voting to admit any country wishing to be represented, whether it was signatory to the Berlin agreement or not, was inspired, it now develops, by this Government.

There is a possibility that some of the European powers will continue to object to the smaller Western countries being represented, yet it is thought that the influence of the State Department will be strongly felt. Both the President and the Secretary of State are known to be strongly impressed with the idea that the time has come when foreign powers should be brought to recognize the independence and sovereignty of every country on the Western Hemisphere.

Venezuela, which refused to send a representative to the Pan-American conference at Rio last summer, is said to oppose the idea of sending any representative, because of her difficulties still pending with France, Italy, and other countries.

The Brazilian government, it is understood, is favorable to the idea for an all-American representation, although it declined to sit in the second conference, on the ground that it had ordered some warships and preferred to build up her navy to joining any movement that might lead to a total disarmament idea. Brazil is even now planning to build some new ships, but she is said to be favorable to any movement looking to permanent international peace.

GAMBLER'S TOES LACK SET VALUE

Cannot Recover Damages
Based on Illegal
Income.

NEW YORK, March 3.—In a decision handed down by the appellate division of the supreme court held that a man engaged in an illegal occupation, such as bookmaking or burglary, cannot use the amount of his income from that source as a basis of estimating the amount of damages due to him as a result of injuries which incapacitate him from following that pursuit. The decision was given on an appeal taken by the Interurban Street Railway Company from a verdict obtained against it in a lower court by William S. Murray, a bookmaker.

Run Over by Street Car.

Murray lost three toes at Third avenue and Forty-second street on September 11, 1902, when he was run over by a street car. In the trial of his suit for damages he testified that as a bookmaker he earned \$70 weekly, and that his duties consisted in placing bets on horse races, which work necessitated activity on his part. In submitting the case to the jury the trial judge refused to charge that the jury could not consider this income in naming the amount of damages, as this work was in violation of the penal code.

This was the point on which the appeal was taken, and in ordering a new trial upon it the upper court wrote: "The court erred in refusing to instruct the jury, as requested by defendant's counsel, that it could not consider, as fixing the amount of the damages, the wages paid the bookmaker in placing bets. The plaintiff was violating the law, and when a person is committing a crime he cannot use the wages paid to him for doing it as the basis of a recovery in a civil action."

Pickpockets Also Barred.

"No one would contend that if a pickpocket should have his hands cut off by the negligence of another the amount which he realized in that pursuit prior to the injury could be used as the basis of the damage, nor would anyone contend that a burglar, if injured by the negligent act of another, which prevented his following his criminal career, could use the amount which he had heretofore realized as the basis of a recovery. Yet in either instance they might just as well be resorted to as the evidence admitted in this case."

Students Eagerly Await Year Book Of G. W. University



J. R. BIGGS,
Business Manager, The Mail.

KARL BLOCK,
Editor of The Mail.

Editor Block Trying to Make 1907 Issue Most Notable in Life of Great Institution.

The students and other friends of George Washington University are awaiting with interest the publication of The Mail 7-7, the current year, which will soon be issued. It is the purpose of the editor of the year book for 1907, Karl Morgan Block, to make the current issue one of the most notable in the history of the institution, even surpassing that of last year, which consisted of a handsome edition of nearly 400 pages.

Mr. Block is being assisted in this work by a corps of assistant editors and also has available a number of contributions from students in every department of the institution. The business manager, Joseph R. Biggs, of the department of medicine, has been quite active

in looking after the business details and announces that the advance sale is far beyond expectations. The Mail for 1907 will be printed on colored paper and bound in the college colors—buff and blue. The special features will include individual photographs of each professor, senior student, and winner of a W in the institution, group pictures of every class, team, fraternity, and club, and various cartoons of professors, college scenes and fraternity life. The associate editors, about twenty in number, will furnish a history of each class in the university, while several prizes have been offered to these editors for the best poems, class stories, and imitations.

OKLAHOMA CITIES HANDED A LEMON

Constitutional Convention
Gerrymander Puts Coun-
ty Expenses on Them.

GUTHRIE, Okla., March 9.—The making of small or "fourteen-cornered" counties in Indian Territory by the constitutional convention is causing much complaint among the citizens of such counties. Practically all the agricultural land is non-taxable, throwing the burden of maintaining the county upon personal property and upon real estate in incorporated towns.

Much dissatisfaction exists in Murray county, named after the president of the constitutional convention is causing much complaint among the citizens of such counties. Practically all the agricultural land is non-taxable, throwing the burden of maintaining the county upon personal property and upon real estate in incorporated towns.

Assistant Inspectors
OF HULLS SHAKEN UP

An order was issued yesterday afternoon shifting all assistant inspectors of hulls and boilers of the Steamboat Inspection Service. Supervising Inspector General Upler announces that a rigid inspection of all license examination papers of captains, mates, etc., in the forty-four stations for the past five years, would be begun at once.

GUATEMALA SHY; WON'T JOIN WAR UPON NICARAGUA

Willing To Let Little Re-
publics Have All the
Honors.

Guatemala begs to be excused when it comes to fighting, and she will not ally herself with Honduras, Salvador, and Costa Rica against Nicaragua. An emphatic statement that Guatemala will not participate in any armed intervention was received yesterday in a dispatch from the foreign office at Guatemala City by Dr. Toledo, the Guatemalan minister to the United States.

This dispatch was confirmatory of the statements made by Dr. Toledo a week ago, as quoted in The Times last Sunday. At that time the minister stated, upon arriving in Washington, that he felt sure his country would do everything in its power to bring about peace by arbitration, but it was certain she would not participate in the conflict.

Since Dr. Toledo left his nation's capital, conditions have changed quite materially, and within the past few days all advices received at the State Department and the Central American legations indicated that all five of the Central American countries were certain to become embroiled in the desire and efforts of the others to crush President Zelaya once and for all.

A cablegram received at the State Department yesterday from Philip Brown, chargé d'affaires at Guatemala City, said that all of the Honduran cabinet ministers, except one, had gone to the front with President Bonilla to help drive the enemy from their country. The minister of public works remained behind at the capital to manage the affairs of government.

A dispatch from Salvador stated that that country had been declared to be in a state of siege, or martial law, because of the prospects of its being drawn actively into the conflict.

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